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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/911,537

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Eiji Kito

F-11530

5099

466

7590

09/10/2004

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EXAMINER

LELE, TANMAY S

ART UNIT

PAPER NUMBER

2684

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/911,537

Applicant(s)

KITO, EIJI

Examiner

Tanmay S Lele

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2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2,4,5</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 1 is objected to because of the following informalities: "an radio interface" (assumed to be "a"). Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tiedemann, Jr. et al. (Tiedemann, US Patent No. 5,914,950).

Regarding claim 1, Tiedemann teaches of a communication system (Figures 1 and 2 and column 14, lines 53 –56), which comprises: data acquisition requesting means located in an radio interface for requesting, through said radio interface wherein a sum of transmission power in a cell is limited when communications are simultaneously carried out, data acquisition from a data source located in a network interface (Figure 2, column 6, lines 24 –39 and column 8, lines 15 – 29 and column 8, lines 56 –64); data buffering means located in said network interface for temporarily storing the data requested by said data acquisition requesting means (column 11, lines 53 –63); data transmitting means located in said network interface for successively reading out said data stored in said data buffering means and for transmitting said data to said data acquisition requesting means (column 11, lines 53 –63); and data transfer rate control means located in said network interface for increasing a data transfer rate in said radio interface within

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the limited electric power of transmission, when said data stored in said data buffering means exceed a prescribed threshold (column 18, lines 34 –42 and column 20, lines 20 –28).

Regarding claim 2, Tiedemann teaches all the claimed limitations recited in claim 1. Tiedemann further teaches of wherein said radio interface employs code division multiple access system (column 6, lines 16 – 17).

Regarding claim 3, Tiedemann teaches all the claimed limitations as recited in claim 1. Tiedemann further teaches of which further comprises power measuring means located in said network interface for measuring an electric power of transmitting said data to said data acquisition requesting means (column 10, lines 21 –42), wherein said data transfer rate control means controls said data transfer rate in accordance with the measured electric power and the accumulated amount of said data (column 10, lines 2 –13 and column 16, lines 32 –42).

Regarding claim 4, Tiedemann teaches all the claimed limitations as recited in claim 3. Tiedemann further teaches of wherein said data transfer rate control means increases said data transfer rate, as the amount of data accumulated in the data accumulating means becomes greater, when the measured electric power is smaller than a predetermined value (column 10, lines 21 –56 and column 11, lines 56 –62).

Regarding claim 6, Tiedemann teaches all the claimed limitations as recited in claim 1. Tiedemann further teaches of which further comprises signal to interference noise ratio (SIR) measuring means for measuring a SIR of data transmitted by said data transmitting means, wherein said data transfer rate control means increases said data transfer rate, as accumulated amount of said data increased, when the measured SIR is smaller than a prescribed value

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(column 10, lines 44 –56; column 9, lines 30 –41; column 11, lines 45 –50 and column 17, lines 31 –39).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tiedemann, Jr. et al. (Tiedemann, US Patent No. 5,914,950) in view of H'mimy et al. (H'mimy, US Patent NO. 6,512,752).

Regarding claim 5, Tiedemann teaches all the claimed limitations as recited in claim 1. Tiedemann does not specifically teach of which further comprises distance measuring means for measuring a distance between said data acquisition requesting means and said data transfer rate control means, wherein said data transfer rate control means increases said data transfer rate, as accumulated amount of said data increased, when the measured distance is smaller than a prescribed value.

In a related art dealing with channel allocation based in data rate, H'mimy teaches of which further comprises distance measuring means for measuring a distance between said data acquisition requesting means and said data transfer rate control means, wherein said data transfer rate control means increases said data transfer rate, as accumulated amount of said data increased, when the measured distance is smaller than a prescribed value (column 5, lines 36 – 47).

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It would have been obvious to one skilled in the art at the time of invention to have included into Tiedemann's channel allocation system, H'mimy's carrier assignment, for the purposes of efficient use of network resources depending upon the user's required data rate needs, as taught by H'mimy.

***Citation of Pertinent Prior Art***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Inventor	Publication	Number	Disclosure
Andersson et al.	US Patent	6,519,461	Channel-type switching from a common channel to a dedicated channel based on common channel load
Meng	US Patent	6,697,375	Method and apparatus for bandwidth and frequency management in the U-NII band
Laasko et al.	US Patent	6,603,773	Method and system for controlling the transmission power of certain parts of a radio transmission

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Monday – Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay A. Maung can be reached on (703) 308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tanmay S Lele  
Examiner  
Art Unit 2684

tsl  
August 31, 2004



**NICK CORSARO**  
**PRIMARY EXAMINER**